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Testimony of

**District 1199E-DC
Service Employees International Union (SEIU)**

before the

**Maryland Health Care Commission
Certificate of Need (CON) Program Taskforce**

on

Changes to the Certificate of Need (CON) Process

June 2005

Thank you, Chairman Nicolay and distinguished members of the Maryland Health Care Commission and the Certificate of Need (CON) Program Taskforce, for giving Service Employees International Union (SEIU) District 1199E-DC the opportunity to discuss the future of the Certificate of Need process and its impact on Maryland's health care industry.

The Service Employees International Union (SEIU) District 1199E-DC, is a member-progressive labor organization, organizing and representing healthcare workers in Maryland and Washington DC. We are affiliated with Service Employees International Union, the largest and fastest growing union in the country.

The union strongly believes the CON process is extremely beneficial to all Marylanders for various reasons.

Specifically, the union believes the CON process:

- Lowers health care costs.
- Protects quality of care.
- Improves and protects access to needed health care services, especially among indigent populations.
- Allows for community input and community planning.

Additionally, it is important to learn lessons from those of other States. Various States that have de-regulated their CON laws have experienced negative outcomes. As a result, they have reversed course, and have reinstituted CON procedures.

SEIU 1199E-DC strongly supports Maryland's Certificate of Need (CON) process, and would object to any de-regulation or "weakening" of the current CON process.

Certificate of Need (CON) Laws Lower Health Care Costs

The CON process creates a rational allocation of health care resources, particularly hospital services, to ensure that the public need is being met in the most cost-effective manner. The process lowers costs by ensuring economies of scale, avoiding duplication of services and efficiently distributing services across the state.

CON laws also lower health care worker costs. In a comparison of the healthcare costs per worker in Daimler Chrysler Corporation in 2000 conducted in Wisconsin, Indiana, Delaware, Michigan and New York, a study found that the 3 States with CON laws (Delaware, Michigan and New York), all had significantly lower healthcare costs per worker (up to 164 percent lower) than those in the 2 States without CON laws (Wisconsin and Indiana).

Certificate of Need (CON) Laws Protect Quality Health Care

CONs strengthen quality by controlling the supply of services and facilities thereby assuring an opportunity for sufficient volumes to assist in a providers' ability to maintain proficiency. CONs preserve quality in programs, such as open-heart surgery, angioplasty and neonatal intensive care by promoting a concentration of skilled staffs and preventing the proliferation of low volume programs.

In addition, there is significant evidence showing that high-risk procedures such as cardiac surgeries in an unregulated environment can have potentially dangerous consequences on patients' chances of survival. Many hospitals are eager to perform cardiac surgeries because they are highly profitable and feel that the CON process restricts competition. James J. Cullen, president and chief executive of St. Joseph Medical Center, argues that limiting open-heart surgery CONs benefits patients. Cullen said "adding a medical procedure to get lucrative insurance contracts is not necessarily in

the public's best interest.” Furthermore, said Cullen, “there is a limited supply of experienced heart surgeons, anesthesiologists, nurses and patients.”¹

A study in The New England Journal of Medicine supports Cullen’s points. The study found that cardiac patients admitted to a high-volume hospital increase their survival rate, “The risk of death was disproportionately high at low-volume hospitals.” The study concluded that “the availability of an experienced health care team” and that “the more experience the hospital had, the better the patient’s chance of survival.”²

Certificate of Need (CON) Laws Improve and Protect Access to Needed Health Care Services

CON has an indirect impact on access of care through its limitations on the development of facilities that would siphon off the most profitable health services from hospitals that provide a substantial amount of uncompensated care. CON can help directly and indirectly to assist in creating a more level playing field for indigent care, thereby protecting and supporting some degree of cost-shift. The CON process also ensures that hospitals will continue to serve lower-income areas, and not move to more affluent areas.

Certificate of Need (CON) Laws Allow For Community Input and Community Involvement

The CON process gives consumers a “voice” in their health care systems that are located within their communities. CON ensures that hospitals are driven by the needs and input of their communities, not a business plan.

Many individuals depend upon a healthcare system provides adequate services, and is located nearby in case of emergencies.

¹ *Washington Business Journal*, “Some hospitals don't want Md. regs streamlined,” (Print version July 2, 1999), <http://www.bizjournals.com/washington/stories/1999/07/05/focus4.html>, June 8, 2005.

² The New England Journal of Medicine, May 27, 1999, “The Association Between Hospital Volume and Survival After Acute Myocardial Infarction in Elderly Patients,” pgs. 1640-1648.

De-Regulating the CON Process: Experience in Other States

Many States that have de-regulated their CON laws experienced negative outcomes. Various experiences include the creation of a high number of specialty hospitals which lacked needed services for the indigent population, the reduction of essential health care benefits, and the production of poor patient outcomes for certain types of procedures given by low-volume providers. Given these and many other reasons, States are reversing course and going back to CON laws.

States that eliminated their CON laws have seen a proliferation of physician-owned specialty hospitals that do not provide uncompensated care and do not have 24-hour emergency rooms. These States have more hospitals offering high profit services, such as heart by-pass surgery. This can reduce the quality of by-pass surgery and other procedures if hospitals do not perform enough of the procedures to achieve and remain profitable. Patient services suffer as a result of the inability to do the volume of these procedures.

In Arizona, where the legislature deregulated Certificate of Need in the 1980s, nursing home capacity doubled in less than 5 years while occupancy rates significantly declined to 75 percent.

In Utah, where CON was deregulated in 1984, psychiatric beds capacity increased so much that major employers retaliated by reducing mental health benefits. In other States, such as Wisconsin, Georgia and Virginia have all validated the fact that the CON process assures quality and equitable distribution of health care services.³

A lack of CON law may also produce poor patient outcomes. In California, hospitals there perform fewer than 100 open-heart surgeries per year and have a mortality rate double that of hospitals that perform more than 500 such procedures each year.⁴

³ Jim Nathan, "Community Hospitals and Health Systems Certificate of Need (CON) White Paper," May 1998.

⁴ Maine Legislator Seeks Repeal of 1978 CON Law, (Heartland Institute, March 2005).

CON laws can improve patient outcomes by eliminating low-volume providers in favor of hospitals that provide a high volume of procedures with presumably better care. John Steen, a consultant who has worked for health planning commissions in Georgia, New Jersey and New York, believes “In most states, the conditions necessary to realize these benefits will exist only if the services are regionalized by state regulation.”

After deregulation in Ohio, hospital beds were lost mostly in urban areas, emergency rooms have seen patient loads rise sharply and, for a time, diversions to other hospitals created significant problems.⁵

Although some states have repealed their CON statutes, thirty-six (36) states and the District of Columbia retain some form of review.⁶

Conclusion

Many argue that CON laws suppress competition and don't curb health care costs. However, since the State is the primary payer of health services, it should continue its jurisdiction over regulatory oversight to ensure that quality standards are met, and utilization thresholds are controlled. More importantly, it is the government's role to protect the poor, elderly and indigent populations. CONs prevent “cream-skimming” that ultimately threaten the provision of healthcare services to low-income populations.⁷

SEIU 1199E-DC strongly supports Maryland's Certificate of Need program. As key stakeholders, we are committed to serving the public interest by promoting access, oversight and accountability.

We would like to thank you for giving us the opportunity to present this testimony. SEIU 1199E-DC looks forward to working with you in the future to continue to improve the health care industry, and the lives of all Marylanders.

⁵ M. Smith-Mello, Health Care Costs Compel Fresh Look at Old Regulatory Lever; (Foresight, 2004)

⁶ “2000-2002 State Health Plan Annual Report”, West Virginia Health Care Authority.

⁷ Jim Nathan, “Community Hospitals and Health Systems Certificate of Need (CON) White Paper,” May 1998.